1981

Donald M. Stromquist and Janel. Stromquis v. Clifford Cockayne, James C. Snow, Et al. v. Milton Yorgason and Arthur L. Monson, Et al. : Supplemental Brief of Respondents

Utah Supreme Court

STATE OF UTAH

DONALD M. STROMQUIST and JANE L. STROMQUIST,

Plaintiffs-Appellants,

v.

CLIFFORD COCKAYNE, Salt Lake County Assessor, JAMES C. SNOW, Salt Lake County Auditor, ARTHUR L. MONSON, Salt Lake County Treasurer, WILLIAM DUNN, Salt Lake County Commissioner, WILLIAM HUTCHINSON, Salt Lake County Commissioner, and PETE KUTULAS, Salt Lake County Commissioner,

Defendants-Respondents.

Case No. 16790

DONALD M. STROMQUIST and JANE L. STROMQUIST,

Plaintiffs-Appellants,

v.

MILTON YORGASON, Salt Lake County Assessor, ARTHUR L. MONSON, Salt Lake County Treasurer, WILLIAM DUNN, Salt Lake County Commissioner, ROBERT SALTER, Salt Lake County Commissioner,

Defendants-Respondents.

Case No. 16919

SUPPLEMENTAL BRIEF OF RESPONDENTS

A CONSOLIDATED APPEAL FROM ORDERS OF THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND DENYING THE PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT

THE HONORABLE CHRISTINE DURHAM AND THE HONORABLE BRYANT H. CROFT, JUDGES PRESIDING

BRIAN M. BARNARD
Attorney for Appellants
214 East Fifth South
Salt Lake City, Utah 84111

THEODORE CANNON
Salt Lake County Attorney
BILL THOMAS PETERS
Special Deputy County Attorney
Attorneys for Respondents
220 South 200 East, Suite 400
Salt Lake City, Utah 84111

TIBBALS, ADAMSON, PETERS & HOWELL
LAW OFFICES
SUITE 400 CHANCELLOR BUILDING
220 SOUTH SECOND EAST
SALT LAKE CITY, UTAH 84111
(801) 531-7575

LLEN H. TIBBALS
RAIG G. ADAMSON
ILL THOMAS PETERS
OBERT S. HOWELL
ICHAEL Z. HAYES
OBIN W. REESE

March 2, 1981

Honorable Richard J. Maughan
Chief Justice
Supreme Court
State Capitol Building, #332
Salt Lake City, Utah 84114

Re: Stromquist v. Clifford Cockayne, et al,
Case No. 16790
Stromquist v. Milton Yorgason, et al.,
Case No. 16919 - Supplemental Brief

Dear Justice Maughan:

Pursuant to the Court's Per Curiam Decision filed February 9, 1981, I prepared and filed a Supplemental Brief on the question of standing as requested by the Court. However, in discussing the contents of my brief with Mr. Brian Barnard, attorney for the Stromquists, I find that I have made a mistake in the Supplemental Brief which has been filed with the Court on the 27th day of February, 1981.

On page 3 of my argument, I quote from the decision of Judge Croft. That quote comes from Judge Croft's second decision in the third Stromquist case rather than the decision of Judge Croft in the second Stromquist case. The third Stromquist case is not presently before the court but only Stromquist 1 & 2. Stromquist 3 from which the quoted language has been taken was decided by the trial Judge but is not on appeal. On page 6, sentences 1 & 2, I make reference again to Judge Croft's decision. And finally, in my conclusion, I request affirmance of the decisions of the lower court and in particular that the Court affirm Judge Croft's ruling that the plaintiffs were without standing to bring the action. Again this refers to Judge Croft's ruling in the third Stromquist case.

I would therefore request that the Court review my brief on the issue of standing and disregard the above identified references to Judge Croft's deicision in the third Stromquist case which is not presently before this Court.

I would like to apologize for the inconvenience this may cause the Court or to my opposing counsel. The reference was the result of the fact that I had utilized some of the reasoning in Judge Croft's decision in the third Stromquist case in my oral argument previously held before the Court and had left that decision in my file relative to the cases presently pending before the Court and upon receipt of the Court's decision, reviewed my file to prepare the Supplemental Brief and inadvertently included references to Judge Croft's decision.

If I can be of any further assistance or if any further explanation is required, please do not hesitate to contact me.

Best personal regards,

TIBBALS, ADAMSON, PETERS & HOWELL

Bill Thomas Peters

BTP:jh

cc: Brian M. Barnard

STATE OF UTAH

DONALD M. STROMQUIST and JANE L. STROMQUIST, Plaintiffs-Appellants, v. CLIFFORD COCKAYNE, Salt Lake County Assessor, JAMES C. SNOW, Salt Lake County Auditor, ARTHUR L. MONSON, Salt Lake County Treasurer, WILLIAM DUNN, Salt Lake County Commissioner, WILLIAM HUTCHINSON, Salt Lake County Commissioner, and PETE KUTULAS, Salt Lake County Commissioner, Defendants-Respondents.	:	Case No. 16790
DONALD M. STROMQUIST and JANE L. STROMQUIST, Plaintiffs-Appellants, v. MILTON YORGASON, Salt Lake County Assessor, ARTHUR L. MONSON, Salt Lake County Treasurer, WILLIAM DUNN, Salt Lake County Commissioner, ROBERT SALTER, Salt Lake County Commissioner, Defendants-Respondents.	:	Case No. 16919

SUPPLEMENTAL BRIEF OF RESPONDENTS

A CONSOLIDATED APPEAL FROM ORDERS OF THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND DENYING THE PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT

THE HONORABLE CHRISTINE DURHAM AND THE HONORABLE BRYANT H. CROFT, JUDGES PRESIDING

BRIAN M. BARNARD
Attorney for Appellants
214 East Fifth South
Salt Lake City, Utah 84111

THEODORE CANNON
Salt Lake County Attorney
BILL THOMAS PETERS
Special Deputy County Attorney
Attorneys for Respondents
220 South 200 East, Suite 400
Salt Lake City, Utah 84111

TABLE OF CONTENTS

AUTHORITIES CITED

Cases

IN THE SUPREME COURT OF THE

STATE OF UTAH

DONALD M. STROMQUIST and JANE L. STROMQUIST, Plaintiffs-Appellants, v. CLIFFORD COCKAYNE, Salt Lake County Assessor, JAMES C. SNOW, Salt Lake County Auditor, ARTHUR L. MONSON, Salt Lake County Treasurer, WILLIAM DUNN, Salt Lake County Commissioner, WILLIAM HUTCHINSON, Salt Lake County Commissioner, and PETE KUTULAS, Salt Lake County Commissioner, Defendants-Respondents.	Case No. 16790
DONALD M. STROMQUIST and JANE L. STROMQUIST, Plaintiffs-Appellants, v. MILTON YORGASON, Salt Lake County Assessor, ARTHUR L. MONSON, Salt Lake County Treasurer, WILLIAM DUNN, Salt Lake County Commissioner, ROBERT SALTER, Salt Lake County Commissioner, Defendants-Respondents.	Case No. 16919

STATEMENT OF PURPOSES OF SUPPLEMENTAL BRIEF

This brief is submitted pursuant to the Order of the Supreme Court set forth in its Per Curiam Decision filed

February 9, 1981 directing the parties to file supplemental briefs on the issue of Plaintiff's standing to bring the action.

Pursuant to the Court's directive, this brief is supplemental in nature and therefore, Respondents depart from the usual format set forth in the Rules of Civil Procedure for preparing and filing an appellate brief and reference is made to the brief previously filed by the Respondents in this case for compliance with the requirement that there be a Statement of the Nature of the case, the Disposition in the Lower Court, the Relief Sought on appeal, and the Statement of Facts. The further briefing requested by the court concerning the issue of standing is herewith submitted.

ARGUMENT
POINT I

THE PLAINTIFFS WERE WITHOUT STANDING TO BRING THE ACTION AND THE RULING OF THE TRIAL COURT SHOULD THEREFORE BE AFFIRMED

Plaintiffs-Appellants in their Complaints for Mandamus and Declaratory Relief for the years 1978 and 1979 did not allege any direct or indirect injury by the actions complained of. Indeed, there is no such injury.

Plaintiffs-Appellants, in their Complaint, do not allege or establish any immediate threat of harm. There is no such threat of harm. They do not allege or establish injury to any legally protectible interest particular to them. There is no interest peculiar to them.

As was stated by Judge Croft, in his decision:

> "No facts are alleged to support this conclusion and none of the grounds set forth in Rule 65A(e) for injunctive relief are apparent in the pleadings. There is no allegation of any injury or damages to plaintiffs set forth in the Complaint."

Further,

> "Plaintiffs by their Complaint are seeking to compel County officers to comply with statutory provisions with no allegation of facts showing that they are not doing so."

In Main Parking Mall v. Salt Lake City, 531 P.2d 866 (Utah 1975) this Court set forth the requirements that must be met in order to state a cause of action.

> "A party maintaining an action under the Declaratory Judgments Act must have a substantial interest or a legally protectible interest in the subject matter of the litigation. The Complaint fails to allege that the plaintiff has a legally protectible interest in the contract which is the subject matter of the action. It thus appears that the plaintiff does not present a justifiable issue for determination by the Court." (emphasis supplied)

In this case, there is no justifiable issue for judicial determination. Plaintiffs did not allege any direct or indirect injury resulting from the actions complained of. Plaintiffs did not allege or show any immediate threat of harm. They did not allege or assert any injury to any personal or private legally protected interest that is peculiar to them. Indeed, there is no injury. There is no allegation of damage that they would suffer. In Baird v. State, 574 P.2d 713 (Utah 1978) this Court required that a real as opposed to an academic controversy must exist. In the majority opinion, Justice Maughan made the following observations:

> "There were no concrete facts pleaded indicating any specific injury sustained or threatened to plaintiff personally. There were no allegations that plaintiff had sustained a particularized injury that set him apart from the public generally and would give him standing to challenge the constitutionality of the act."

No such particularized injury has been alleged in any of the actions filed by the Stromquists. The questions presented by the Stromquists in their several lawsuits, are purely abstract and academic.

> "The Courts are not a forum for hearing academic contentions or rendering advisory opinions." Supra, page 715.

In order for the court to entertain any action for declaratory judgment, the following conditions must be met:

> "(1) a justiciable controversy;
> (2) the interests of the parties must be adverse;
> (3) the party seeking such relief must have a legally protectible interest in the controversy; and
> (4) the issues between the parties involved must be ripe for judicial determination."

A review of the pleadings in the cases presently before the Court will clearly demonstrate that the Stromquists have failed to allege sufficient facts to satisfy any one of the four requirements set forth above.

The Stromquists in their Complaints, seek to compel county officers to comply with statutory provisions but they make no allegation of facts in their Complaint to show that said officers are not complying. This failure precludes the Court from entertaining their Complaint. As was stated by Justice Maughan in Baird v. State, 574 P.2d 713, (Utah 1978) at page 715:

> "To invoke judicial power to determine the validity of executive or legislative action, claimant must show that he has sustained or is immediately in danger of sustaining a direct injury as a result of that action. It is insufficient to assert a general interest he shares in common with all members of the public, VIZ., a general grievance.

> To grant standing to a litigant, who cannot distinguish himself from all citizens, would be a significant inroad on the representative form of government, and cast the Courts in the role of supervising the coordinate branches of government. It would convert the judiciary into an open forum for the resolution of political and ideological disputes about the peformance of government." (Emphasis supplied)

Judge Croft, in his decision in the instant case, refused to presume that the county officers would not comply with the law. Since the wrong complained of by plaintiffs was not shown to be peculiar to them but rather, was public in nature, the trial court correctly ruled that plaintiffs had no standing before the Court and correctly granted defendants' Motion to Dismiss. If the wrong complained of is public in character, as is present in this case, plaintiff must allege sufficient facts to disclose a special injury that affects plaintiff separate and apart from the other citizens. This has not been done by the Stromquists. They therefore have no standing to urge the unlawfulness of the governmental action. "It is not the duty of the Court to sit in judgment upon the action of the legislative branch of government, except when a litigant claims to be adversely affected on a particular ground by a legislative act." Baird v. State, page 717.

The general rule, as set forth in Baird v. State, has been followed by this Court in the cases of Jenkins v. State, 585 P.2d 442 (Utah 1978) and Jenkins v. Finlinson, 607 P.2d 239 (Utah 1980), and is the law of this State.

The position adopted by the Utah Supreme Court as set forth in the four cases cited above has also been followed in other states.

In Mobile Oil Corporation v. McHenry, 436 P.2d 982 (Kansas, 1968) a taxpayer was seeking mandamus to compel the performance of certain duties. The Supreme Court of Kansas, observed as follows:

> "It has been said that Mandamus will not lie at the instance of a private citizen to compel the performance of a public duty; that such a suit must be brought in the name of the State, and the County Attorney and the Attorney General are the officers authorized to use the name of the State in legal proceedings to enforce the performance of public duties. Where, however, an individual shows an injury or interests specific and peculiar to himself, and not one that he share with the community in general, the remedy of Mandamus and other extraordinary remedies are available."

The Mobile Oil case indicates that a taxpayer has no standing to compel performance of a public duty by a

public offical unless the taxpayer can show that he is uniquely hurt by the conduct. He must show an interest specific and peculiar to himself.

Certainly the taxpayer in the present case cannot make such a showing. It is questionable whether or not these taxpayers allege any injury at all, let alone one that is peculiar to them.

Supporting the holding in the Mobile Oil case is some language found in 36 Am. Jur. 2d, Section 78, Page 661. It is stated in this paragraph that:

> "Where a penalty is payable to the State, it seems clear that the action therefor should be brought in the name of the State, unless some other mode is enacted by statute or established by custom."

Certainly the plaintiff can make no such showing in this case. There is no provision in the applicable statute which would allow the plaintiff to bring this suit.

In Tabor v. Moore, 503 P.2d 736, (Washington, 1972), the plaintiff sought to compel city and county law enforcement officials to refrain from an alleged practice of holding suspects for unreasonable lengths of time. In

denying the taxpayers standing to bring the suit, the Supreme Court of Washington held that:

> "In the absence of a special interest in the outcome of a suit, a condition precedent to maintaining an action against public officials for illegal expenditure of funds is that demand be made upon the Attorney General to institute proceedings to preven the illegal expenditure of funds." at page 738.

That case is very similar to the one at hand. The taxpayers in the instant case allege in effect that certain funds have been expended illegally. These plaintiffs claim that the County Assessor has been paid wages in contravention of statute. In order to make such a claim, however, the Supreme Court of Washington stated that the taxpayer must first make a demand on the Attorney General to enforce the statutory provisions; and, the Washington Supreme Court held that without having made such a request, the plaintiff has no standing to bring an action for Mandamus to compel the Attorney General to enforce the provision. Indeed, the request of the Attorney General was found to be a condition precedent to a Mandamus action.

Here the plaintiffs made no such demand on the

County Attorney or Attorney General. Therefore, as in Tabor, this Court should find that the taxpayer has no standing and must first make the request before bringing the mandamus action.

In the case of Reiter v. Walgren, 184 P2d 571 (Washington, 1974), the Court announced the same principle of law which was relied on by the Washington Supreme Court in Tabor. The language in Reiter seems to go even further, however. The Court in Reiter found that the taxpayer who had no special interest, and had not made the required demand on the County Attorney or Attorney General, had no capacity to sue, as well as no standing.

In the case of Austin v. Campbell, 370 P2d 769 (Arizona, 1962), the Arizona Supreme Court held that a state statute which required such a request on the Attorney General before instigating suit was a jurisdictional requirement. A Court exceeded its jurisdiction if it considered a suit brought to compel official action where the required request had not been made.

Finally, in the case of Lyon v. Bateman, 228 P2d 818 (Utah, 1951), the Utah Supreme Court held that a tax-

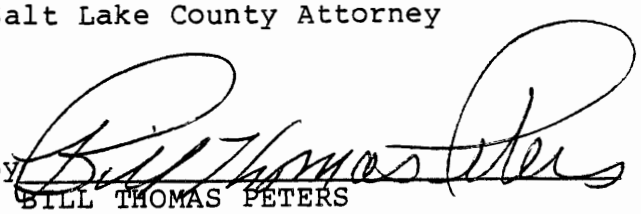
payer can maintain an action to question an appropriation under an unconsitutional statute only when he has shown a pecuniary interest. No such interest exists or was alleged in the instant case.

CONCLUSION

It is respectfully submitted, that Judge Croft, in the second Stromquist case, correctly ruled that the plaintiff-appellants were without standing to bring the action. His legal conclusions are supported by the decisions of this Court, Courts from other jurisdictions, and the decisions of the trial courts should therefore be affirmed.

DATED this 27th day of February, 1981.

THEODORE L. CANNON
Salt Lake County Attorney

By 
BILL THOMAS PETERS
Special Deputy County Attorney
Attorney for Defendant-Respondents

CERTIFICATE OF SERVICE

I hereby certify that I mailed two (2) copies of the foregoing brief to Plaintiffs-Appellants' attorney, Brian M. Barnard, 214 East Fifth South, Salt Lake City, Utah 84111 by placing a copy of the same in the U. S. Mail, postage prepaid, or by placing a copy of the same with The Runner Service this 27th day of February, 1981.